Page

Appendices

Appendix A - Judgment of the Court of Appeals filed February 25, 1982 . . . . . A-1

Appendix B - Order of the District Court Denying Temporary Injunction B-1

Appendix c - Order of the First Court of Appeals overruling motion for rehearing C-1

Order of the Supreme Court of Texas dismissing application for writ of error for want of jurisdiction C-3

Order of the Supreme Court of Texas overruling motion for rehearing C-4

Appendix D - Tex.Rev.Civ.Stats. Ann.Art. 2372p-3 The Bail Bond Act D-1

Appendix E - Notice of Appeal filed November 2, 1982 . . . . E-1

Appendix F - Letter from C.R. Gaines, Harris County Sheriff's Office, to Luke W. Able, Jr. Plaintiff's Exhibit 1 . . . . . F-1

Letter from John B. Holmes, Jr., Harris County District Attorney, to C.R.Gaines Defendants' Exhibit 1 . . . . . F-4

Page

Appendix G - Excerpts from Plaintiff's request for additional or amended findings of fact and conclusions of law to trial court showing raising of constitutional issues G-1

APPENDIX A

FIRST COURT OF APPEALS

LUKE WILLIAM ABLE,JR.ET.AL.,APPELLANT

NO.18106 VS.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 55th District Court of Harris County, Texas
Trial Court Cause Number 81-15461

This is an appeal from the denial of an interlocutory motion for mandatory temporary injunction. We affirm the judgment.

Appellant, Luke William Able,Jr., a practicing attorney licensed by the State of Texas, provides legal services to the community in the form of various legal clinics. Until March 6, 1981, he had routinely executed bail bonds on behalf of his clients in criminal matters without being licensed as a bondsman, pursuant to

an exemption under Section 3 of Article 2372p-3, V.A.T.S, commonly known as the Bail Bond Act.[1] On March 6, 1981, he received a letter from the Harris County Sheriff's Office informing him that, pursuant to an advisory opinion issued by the Harris County District Attorney's Office, and under the sheriff's discretionary right under Section 4 of the Act, he would no longer be allowed to execute bail bonds in Harris County, inasmuch as he had violated Section 15(d) of the Act by "advertising as a bondsman." At the heart of the sheriff's office's action was a dispute concerning certain advertising by

---

[1]While the Bail Bond Act was amended effective August 30, 1981, this action arose prior to such date. All quotations from and references to the Act will be to the Act as it stood prior to August 30, 1981. We reject appellee's contention that appellant's appeal has become moot and should be dismissed.

appellant. Under the heading "Bonds-Bail" in the local telephone directory, appellant had listed his name, given services information, and stated that he was "Not a Bondsman." His name and services information also appeared in at least one local business directory under the heading "Bonds-Bail," but did not reflect that he was "Not a Bondsman." The business directory had circulation within and without Harris County. While appellant also advertised his services under the heading "Attorneys," that listing is not a source of dispute.

Appellant filed suit against the Harris County Sheriff's Office, the State of Texas and Harris County, alleging the unconstitutionality of Sections 15(d) and 4 of the Act, praying for damages, declaratory judgment and other relief, including a mandatory temporary injunction to permit him to execute bail bonds in Harris County,

pending final deterimination of the suit on the merits. Appellees contended that inasmuch as appellant had "advertised as a bondsman," he had forfeited his exemption privilege under Section 3(b) of the Act. Section 3(b) provides that

> Persons who are actually engaged in the practice of law and who are members of the State Bar of Texas who personally execute bail bonds or act as sureties for persons they actually represent in criminal cases may execute bailbonds or sureties without being licensed under this Act, but they are prohibited from engaging in the practices made the basis for revocation of license under this Act, and, if found guilty of violating the terms of this Act, may not qualify thereafter under the exception provided in this subsection (emphasis added).

Under Section 9(b)(1) of the Act, a license may be revoked for the violation of the provisions of the Act. Under Section 15(d) of the Act, no person may advertise as a bondsman without being licensed under the Act. It is clear that the legislature intended to prohibit attorneys

from engaging in practices that are grounds for license revocation. Minton v. Frank, 545 S.W.2d 442 (Tex. 1976). As it is a violation of the Act to advertise as a bondsman without holding a license under the Act, and inasmuch as violation of the Act is a grounds for revocation of a bondsman's license, and such acts are prohibited to attorneys claiming the Section 3(b) exemption, it is equally clear that an attorney, to claim qualification under Section 3(b), may not advertise as a bondsman. We also note that under Section 4 of the Act,

> A sheriff may examine under oath any proposed bondsman, or an officer or attorney of any company proposing to execute a bond, as to the indemnity, if any, deposited or otherwise provided directly or indirectly against loss by reason of the bond, and may refuse to accept the bond if, in the exercise of his discretion, he is satisfied that...the provisions of this Act have been violated (emphasis added).

It was in exercise of Section 4 of the Act that the Harris County Sheriff's Office refused to allow appellant to continue executing bail bonds.

On appeal, appellant raises one point of error, alleging error and abuse of discretion by the trial court in denying mandatory temporary injunction. In support of his argument, appellant offers voluminous legal argument for the unconstitutionality of Sections 15(d) and 4 of the Act, and relies primarily on the recent Supreme Court decision of Iranian Muslim Organization v. City of San Antonio, 615 S.W.2d 202 (Tex. 1981). It is appellant's position that under the Iranian decision, he was entitled to injunction as a matter of law as any violation of a constitutional right raises a presumption of irreparable injury.

A determination of the constitution-

ality of the Act is not within the proper scope of review of temporary injunction proceedings, and we decline to accept appellant's invitation to declare it unconstitutional. Davis v. Huey,571 S.W.2d 859 (Tex. 1978). We are limited to a review for abuse of discretion based upon the evidence presented to the trial court. City of Dallas v. Dallas City House Mover's Association, 555 S.W.2d 212 (Tex. Civ.App.-Dallas 1977, n.w.h.); Shopper's Fair of North Houston v. City of Houston, 406 S.W.2d 86 (Tex. Civ.App. -- Eastland 1966, n.r.e.).

Thus if at the hearing appellant did establish violation of his constitutional right of free speech, then under Iranian he would be entitled to mandatory temporary injunction as prayed for. As stated in Southwestern Newspapers Corp. v. Curtis, 584 S.W.2d 362 (Tex. Civ.App. -- Amarillo 1979, n.w.h.), cited with approval in

Iranian,

> In the classical sense, the granting of a temporary injunction is not warranted in the absence of some evidence establishing probable injury if the temporary injunction is not granted....But the legalism has no efficacy if there is a deprivation of a First Amendment freedom, for any significant denigration of First Amendment rights inflicts irreparable injury ...and constitutes irreparable harm.

584 S.W.2d at 365. However, after a careful review of the temporary injunction proceedings, we are of the opinion that appellant neither raised nor presented evidence to establish any violation of his free speech rights that would make the Iranian decision applicable to this case. In fact, we note that appellant opened the hearing by stating "I submit that the court does not have to decide the constitutional questions involved here today." This is to be compared with Iranian, where

> The sole question at the temporary injunction proceeding and on appeal has been whether the city's absolute ban on all public parades encompassing the Iranian question represents an unconstitutional prior restraint on free speech so as to inflict an irreparable injury.

615 S.W.2d 207. Under the facts as presented to the trial court, appellant did not establish any right to injunction as a matter of law pursuant to the Iranian decision.

The only question before the trial court in temporary injunction proceedings is whether the applicant is entitled to preservation of the status quo of the subject matter pending trial on the merits. Where no findings of fact or conclusions of law are filed by the trial court in connection with the denial of a temporary injunction, the judgment must be upheld on any legal theory supported by the record. Davis v. Huey. Under the Bail Bond Act

as written, and with the evidence presented, appellant had not established a probable right to prevail on the merits, and did not establish "irreparable injury" that could not be compensated by damages. McGonagill v. Hide-A-Way Lake Club, Inc., 566 S.W.2d 371 (Tex. Civ.App. --Tyler 1978, n.w.h.). Without commenting in any manner as to the underlying issue of constitutionality, we find that the trial court did not abuse its discretion in denying the injunction.

The judgment below is affirmed, with costs of appeal adjudged against the respective parties.

/s/ Lee Duggan, Jr.
Associate Justice

Associate Justices Peden and Warren also sitting.
Associate Justice Peden, having resigned effective October 20, 1981, did not participate in the opinion.
No publication. Tex.R. Civ.P.452
Judgment rendered and opinion filed February 25, 1982.

APPENDIX B

NO. 81-15,461

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

11TH JUDICIAL DISTRICT

LUKE WILLIAM ABLE, JR., Etc.

VS.

SHERIFF JACK HEARD, ET AL.

ORDER DENYING TEMPORARY INJUNCTION

On this 18th day of May, 1981, came on to be heard the above numbered and entitled suit in which Luke William Able, Jr., d/b/a Criminal Defense Clinic; Able Bail, Defense and Divorce Clinic; and Able Bail and Defense Clinic seeks temporary injunctive relief requiring defendants The State of Texas, Sheriff Jack Heard, Captain C.R. Gaines and Harris County to permit plaintiff to execute bail bonds pending final determination of this suit

challenging the constitutionality of Article 2372p-3, Vernon's Texas Civil Statutes, commonly known and described as the Bail Bond Act. Plaintiff Luke William Able, Jr., appeared in propria persona and announced ready for trial. Defendant The State of Texas appeared by the Attorney General of Texas and announced ready for trial. Defendants Sheriff Jack Heard, Captain C.R. Gaines and Harris County appeared by the County Attorney of Harris County and announced ready for trial. The Court having given due consideration to the pleadings filed by the parties, to the evidence adduced on trial, and to the arguments of counsel thereon, the Court is of the opinion that plaintiff Luke William Able, Jr., has not presented evidence that he has a probable right to continue to act as a surety on bail bonds he executes under the Bail Bond Act

pending the final determination of this suit on the merits. It is accordingly

ORDERED by the Court that the temporary injunction sought by plaintiff is DENIED. All costs are adjudged against plaintiff Luke William Able, Jr.

In open Court the plaintiff took exception to the ruling of the Court and gave notice of appeal to the Court of Civil Appeals.

SIGNED this 1 day of June, 1981.

/s/ Reagan Cartwright
JUDGE PRESIDING

APPENDIX C

BE IT REMEMBERED:

THAT at the term of the Honorable Court of Appeals for the First Supreme Judicial District of the State of Texas, begun and holden at Houston on the 1st Monday of October, A.D.1981, present FRANK G. EVANS, Chief Justice, Justices JAMES F. WARREN, HENRY E. DOYLE, JACK SMITH, SAM BASS, LEE DUGGAN, JR., ALLEN STILLEY, ARTHUR DYESS and FRANK C. PRICE.

In the cause

LUKE WILLIAM ABLE, JR. ET AL. Appellant,

No. 18106

vs.

From Harris County

Tr Ct # 81-1546

Opinion by Duggan, AJ

JACK HEARD ET AL. Appellee,

the following order was entered April 22, 1982:

"It is ordered that appellant's motion

for rehearing be OVERRULED."

C-3

IN THE SUPREME COURT OF TEXAS

July 21, 1982

No. C-1287

LUKE WILLIAM ABLE, JR. ET AL.

VS.

THE STATE OF TEXAS

From Harris County

First District

Application of petitioners for writ of error to the Court of Civil Appeals for the First Supreme Judicial District having been duly considered, it is ordered that the application be, and hereby is, dismissed for want of jurisdiction.

It is further ordered that applicant, Luke William Able, Jr. et al., and Mary Beth Able as surety pay all costs incurred on this application.

- - - - - -

C-4

October 6, 1982

No. C-1287

LUKE WILLIAM ABLE, JR. ET AL.

VS.

THE STATE OF TEXAS

From Harris County

First District

Petitioners motion for rehearing of application for writ of error having been duly considered, it is ordered that said motion be, and hereby is, overruled.

- - - - - -

APPENDIX D

Tex.Rev.Civ.Stats.Ann., Art. 2372p-3

Licensing and regulation of bail bondsmen

Declaration of policy

Section 1. The business of executing bail bonds is declared to be a business affecting the public interest. It is declared to be the policy of this state to provide reasonable regulation to the end that the right of bail be preserved and implemented by just and practical procedures governing the giving or making of bail bond and other security to guarantee appearance of the accused.

Definitions

Section 2. In this Act:

(1) "Person" includes corporations, other business entities, and associations of persons.

(2) "Bondsman" means any person who for hire or for any compensation deposits any cash or bonds or other securities, or executes as surety any bond for other persons, as many as five times in any 12-month period.

(3) "Company" includes corporations and other business entities.

(4) "Bond" includes cash deposit and any other similar deposit or written undertaking to assure appearance.

(5) "Board" means the County Bail Bond Board.

Requirements of license

Section 3. (a) No person may act

as a bondsman without the license required under the provisions of this Act, except as provided in Subsections (b), (c), and (d) of this section.

(b) Persons who are actually engaged in the practice of law and who are members of the State Bar of Texas who personally execute bail bonds or act as sureties for persons they actually represent in criminal cases may execute bail bonds or sureties without being licensed under this Act, but they are prohibited from engaging in the practices made the basis for revocation of license under this Act and, if found guilty of violating the terms of this Act, may not qualify thereafter under the exception provided in this subsection.

(c) The provisions of this Act do not apply to the execution of bail bonds in counties having a population of less than 110,000 according to the last preceding federal census.

(d) Persons who execute bonds as cosureties with a licensed bondsman.

Examination of bondsman by any sheriff

Section 4. A sheriff may examine under oath any proposed bondsman, or an officer or attorney of any company proposing to execute a bond, as to the indemnity, if any, deposited or otherwise provided directly or indirectly against loss by reason of the bond, and may refuse to accept the bond if, in the exercise of his discretion, he is satisfied that the security is insufficient, any portion of the security has been feloniously obtained, or the provisions of this Act have been violated.

County bail bond board

Section 5. (a) There is hereby created in all counties having a population of 110,000 or more, according to the last preceding federal census, a County Bail Bond Board.

(b) It shall be the duty of the County Bail Bond Board to set rules and regulations relative to the making of bail bonds by bondsmen within the county. No person may act as a bondsman unless he first obtains a license from the board unless exempted under the provisions of Section 3 of this Act.

(c) The County Bail Bond Board shall be composed of the following persons:

(1) the county sheriff or his designee;

(2) a district judge of the county having jurisdiction over criminal matters designated by the presiding judge of the administrative judicial district;

(3) the county judge or a member of the commissioners court designated by the county judge;

(4) a judge of a county court or a county court at law in the county having jurisdiction over criminal matters designated by the commissioners court;

(5) the district attorney or his designee.

(d) The board shall meet within 60 days after its creation. The board shall initially elect one of its members as chairman who shall preside at all meetings to be held thereafter at the call of the chairman.

(e) Three members of the board shall constitute a quorum for the conduct of business. All action by the board shall require the vote of a majority of the

members present.

(f) Unless clearly not required by this Act, all rules, regulations, and actions of the board passed pursuant to this Act shall be posted at an appropriate place in the courthouse for a period of 10 days prior to their effective date.

(g) The County Bail Bond Board has the following powers and duties:

(1) To establish rules to be followed in the county relating to the setting and taking of bail bonds;

(2) To conduct hearings and make determinations respecting the issuance of licenses to bondsmen within the provisions of this Act and to issue licenses to bondsmen who qualify under the terms of this Act;

(3) To administer oaths and examine witnesses in its hearings;

(4) To investigate applicants and licensees and all persons in concert with them to determine their qualifications to meet the requirements of this Act;

(5) To cause records and transcripts to be made of all its proceedings; and

(6) To maintain records and minutes and otherwise operate its office affairs.

Application and issuance of license

Section 6. (a) Any person desiring to act as a bondsman in any court of the county shall file with the County Bail Bond Board a sworn application for a license. The application shall be in such form as the board may prescribe, and shall set forth:

(1) The name and address of the applicant, and if the applicant shall be

a firm or corporation, the name of each officer and director thereof and all of its employees actively engaged in processing the giving or making of bail bonds within the county;

(2) The name under which the business shall be conducted;

(3) The name of the place or places wherein the business is to be conducted;

(4) The list of nonexempt properties owned by the applicant and rendered on the tax rolls of the county, the same to be certified by the county tax assessor and collector of the county involved, along with a personal financial statement of the applicant;

(5) Any corporation duly qualified to act as a surety in the State of Texas shall name its agent or agents proposed to do business of making bail in the county;

(6) A statement that such applicant has not been denied or refused a license in the county during the past 12 months.

(b) The application shall be accompanied by letters of recommendation from three reputable persons who have known the applicant for a period of at least three years. Each letter shall recommend applicant as having a reputation of honesty, truthfulness, fair dealing, and competency and shall recommend that the permit be granted to the applicant.

(c) The application shall be accompanied by a fee of $500 for the filing of any original application.

(d) Upon notice from the board that the application has been tentatively approved, the applicant shall then:

(1) deposit with the county treasurer of the county in which his principal

office is located a cashier's check, certificate of deposit, or cash in the amount of $5,000, to be held in a special fund to be called the bail security fund; or

(2) execute in trust to the sheriff of the county in which his principal office is located a deed to nonexempt real property of the value, as determined by the sheriff, of not less than $10,000, the condition of the trust being that the property may be sold to satisfy any forfeitures that may be made in bonds executed by him after such notice and upon such conditions as are hereinafter provided.

(e) The cash deposit or the funds realized from the trust may be used to pay the judgments of any bail forfeitures that result from the person's execution of a bail bond, if the licensee fails to satisfy the judgment within 30 days subsequent to the date of issue by presentment of final judgment to the county treasurer. When any sums are depleted from the deposit or trust to pay a judgment resulting from a forfeited bond, the licensee shall, as a condition to continuing as a licensee, replenish the amount so depleted. When the licensee ceases to engage in the business of executing bail bonds and ceases to maintain his license, he may withdraw his security deposit or trust upon presentment of a release by the sheriff, if there are no judgments or bond liabilities outstanding against the license. Any portion of the deposit or trust not used to pay judgments shall be returned to the licensee or his heirs or assigns upon presentment of a release by the

sheriff.

(f) Before application of the cash deposit, cashier's check, or certificate of deposit, or before any action is taken to liquidate property held in trust, the sheriff or his agent shall make demand of the licensee to pay the judgment. In the event of failure or refusal to do so within 30 days of the demand, the sheriff may apply the deposit to pay the judgment or liquidate the trust and apply the proceeds to pay the judgment. The licensee shall keep the sheriff notified of the mailing address to which notice of a judgment may be sent, and the mailing of notices by certified mail to the address provided by the licensee shall be sufficient to comply with the notice requirements of this section.

Corporation as surety

Section 7. (a) Wherever in this Act any person is required or authorized to give or execute any bail bond, such bail bond may be given or executed by such principal and any corporation authorized by law to act as surety. When any such corporation authorized by law to act as a surety undertakes to be a surety on a bail bond, such corporation, before being acceptable as a surety on a bail bond, shall be required to meet the same requirements an individual is required to meet by this chapter before being acceptable as a personal surety on a bail bond.

(b) The certificate of authority to do business in this state issued to a corporation by the State Board of Insurance pursuant to Article 8.20, Insurance

Code, as now or hereafter amended, shall not be conclusive evidence as to the sufficiency of the security, the corporation's solvency, or its credits; and if the court or officer taking the bail bond is not fully satisfied as to the sufficiency of the security offered by the corporation, further evidence shall be required before approving the bail bond.

(c) Any corporation which acts as a surety shall, before executing any bail bond, first file in the office of the county clerk of the county where such bail bond is given a power of attorney designating and authorizing the named agent, agents, or attorney of such corporation to execute such bail bonds by such agent, agents, or attorney. This power of attorney shall be a valid and binding obligation of the corporation.

(d) Notwithstanding any statutory requirements to the contrary, any agent so designated and licensed hereunder for the purpose of writing bail bonds shall not be required to be licensed as a local recording agent as defined in Article 21.14, Texas Insurance Code, as amended, for the purpose of this Act.

Expiration of license

Section 8. (a) A license issued under this Act expires 24 months after the date of its issuance and may not be renewed unless an application for renewal is filed with the board at least 30 days before expiration. The application for renewal shall have the same form and content as an application for an original license under this Act. The application

for renewal shall be accompanied by a renewal fee of $250. The license may then be renewed for a period of 12 months from the date of expiration and may be renewed subsequently each year in like manner.

(b) All fees collected by the board shall be deposited in the general fund of the county.

(c) Each license, when issued, shall show on its face the date of expiration and license number, and it shall be the responsibility of the licensee to file for renewal under the terms of this Act, and each subsequent renewal license shall have the same number as assigned the original license.

Refusal and revocation of license

Section 9. (a) No license may be issued to any person who:

(1) is bankrupt or insolvent; or

(2) has had his license revoked for default upon a bond and has not satisfied the obligation of the bond.

(b) Any license may be suspended or revoked by the board for:

(1) violation of the provisions of this Act;

(2) fraudulently obtaining a license under the provisions of this Act;

(3) conviction under the laws of this or any other state or of the federal government of a misdemeanor involving moral turpitude or of a felony;

(4) being adjudged bankrupt or becoming insolvent;

(5) failing to pay within 30 days any final judgment rendered on any forfeited bond in any court of competent juris-

diction within this state;

(6) failure to pay, in addition to the principal amount of a forfeited bond, all necessary and reasonable expenses incurred by all peace officers in arresting the principal on any bail bond executed by him, in the event the principal fails to appear as required by law;

(7) a licensee's paying commission or dividing commissions or fees with any person, company, firm, or corporation not permitted hereunder to execute bonds or in any manner passing anything of value to any person for referrals of bond business; or

(8) soliciting bail bond business in any building where prisoners are processed or confined.

Procedure for suspension or revocation of license

Section 10. (a) The board may revoke or suspend a license in accordance with the procedure provided in this section for the violation of any provision of this Act.

(b) Notice of a hearing to suspend or revoke shall be given by certified mail addressed to the last known address of the licensee at least 10 days prior to a date set for the hearing.

(c) The notice shall specify the charges of violation of this Act made against the licensee, and no other charges shall be made at the hearing pursuant to the notice.

(d) The hearing shall afford to the licensee opportunity to be heard, to present witnesses in his behalf, and to

question witnesses against him.

(c) A record of the hearing shall be made. It shall be made available to the licensee on his request subject to his paying reasonable costs of transcription.

Court review

Section 11. An appeal may be taken from any board's order revoking, suspending, or refusing to issue a license. The appeal must be made within 30 days after written notice of the suspension, revocation, or refusal by filing a petition in a district court in the county in which the license is issued or refused. If no appeal is taken within 30 days after written notice of suspension, revocation, or refusal, such action shall become final. An appeal shall be by trial de novo, as in proceedings appealed from justice to county courts. The decision of the board shall have full force and effect pending the determination of the appeal. All appeals taken from actions of the board shall be against the board and not against the members individually.

Other procedural provisions

Section 12. (a) In each instance where a principal has been rearrested and returned to the county wherein his bond was made within 120 days after the date of the final judgment on the bond forfeiture and no appeal has been taken and provided that the principal was rearrested as a result of money spent or information furnished by the surety,

the surety thereon may file a motion of remittance in the court commanding the appearance of the principal and the court shall order at least 50 percent of the amount paid on the judgment remitted. The payment shall be made by the county treasurer.

(b) Any licensee under this Act may execute bail bonds in the county in which his license is issued and, after being certified by the sheriff in his county, may present a bail bond to any sheriff in the state having custody of the accused person named therein, except that a sheriff of a county having a population in excess of 110,000 according to the last preceding federal census may require that all bail bonds be executed by persons licensed in that county.

(c) A person whose application for license to engage in the execution of bail bonds has been refused may not make or renew the application for a period of one year from the date of final rejection.

Surrender of principal

Section 13. (a) No person who executes a bail bond as a surety for a principal may surrender the principal unless he forthwith executes an affidavit to be filed with the clerk of the court stating:

(1) the date the bond was made;

(2) the fee paid for the bond; and

(3) the reason for the surrender.

(b) If the reason for surrender is deemed without reasonable cause by the principal, any agent of the sheriff, or any attorney representing the state or any accused in the proceeding that

person may bring the matter to the attention of the court.

(c) If the court determines that the person who surrendered the principal did so without reasonable cause, the court in its discretion may require that all or a part of the fees paid as a condition for making the bail bond shall be returned to the principal. In making the determination the court shall determine what fees, whether denominated fees for the making of the bond or not, were in fact paid for the purpose of inducing the surety to make the bond.

Approval of bond

Section 14. The sheriff of any county has the sole responsibility of receiving and approving bail bonds for the purpose of gaining the release of a named principal held in custody by any authority in his county upon accusation of an offense of which the county or district court has jurisdiction.

Acts subject to fine

Section 15. (a) No person required to be licensed under this Act may execute a bail bond without a license.

(b) No bondsman or agent of a bondsman may, by any means, recommend or suggest to any person whose bail bond has been posted by that person the name of any particular attorney or firm of attorneys for employment in connection with a criminal offense.

(c) No sheriff, peace officer, or his deputy or employee, or clerk, or deputy clerk of any court may recommend to any

person or persons, family of such person or persons, friends, relatives, or employer the name of any particular bondsman. In all places where prisoners are examined,processed or confined, a list of licensed bondsmen of that county may be displayed.

(d) No person may advertise as a bondsman who does not hold a valid license under this Act. Provided, however, any second or subsequent violation of this subsection shall be punishable as provided by Subsection (g) of this section.

(e) Any person who violates a provision of this section commits a misdemeanor punishable by a fine of not more than $500.

(f) No stocks or bonds or real estate used as security for the making of any bail bond may be transferred at any time while there remains an outstanding bail bond secured by this property; except that a surety may make application to the sheriff for permission to sell or trade any portion of such property and the sheriff shall give a written consent for such sale or trade upon finding that the remaining property is sufficient security for all outstanding bonds of the licensee.

(g) Any person who violates Subsection (f) of this section shall be guilty of a misdemeanor punishable by a fine of not more than $1,000 or confinement in the county jail for not more than one year or both.

Severability

Section 16. If any provision of this

Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Acts 1973, 63rd Leg., p. 1520, ch.550, eff. Aug.27,1973. Secs.3(c),5(a) and 12(b) amended by Acts 1975, 64th Leg., p. 1194, ch.451,§§1 to 3, eff. June 19, 1975; Acts 1979, 66th Leg., p. 202, ch. 111, §§1 to 3, eff. Aug. 27, 1979.

APPENDIX E

NO. 18,106

IN THE

COURT OF CIVIL APPEALS

FOR THE

FIRST SUPREME JUDICIAL DISTRICT OF TEXAS

AT HOUSTON

LUKE WILLIAM ABLE, JR. doing business as the Criminal Defense Clinic; Able Bail, Defense, and Divorce Clinic; and Able Bail and Defense Clinic,

Appellant,

v.

THE STATE OF TEXAS; JACK HEARD; C.R. GAINES; and HARRIS COUNTY,

Appellees.

NOTICE OF APPEAL

Notice is hereby given that Luke William Able, Jr. hereby appeals to the United States Supreme Court from the judgment of this Court entered in the above captioned proceeding on the 25th day of February, 1982 affirming the Order

Denying Temporary Injunction of the District Court of Harris County, Texas, 11th Judicial District, entered on June 1, 1982. The Supreme Court of Texas declined jurisdiction and on October 6, 1982 it denied appellant's motion for rehearing. This appeal to the Supreme Court of the United States is taken under 28 U.S.C. §1257 (2).

Dated: 11/2/82

Patricia Small Burroughs
Attorney for Appellant
7303 Hillcroft, Suite 53
Houston, TX 77081
(713) 777-0744

CERTIFICATE OF SERVICE

I, Patricia Small Burroughs, a member of the Bar of the United States Supreme Court, counsel for the appellant, hereby certify that on the 2nd day of November, 1982, I served the foregoing Notice of Appeal on all parties required to be served by depositing three copies of said Notice of Appeal in a United States mailbox, with first-class postage prepaid, addressed to counsel of record for each party at his or her post office address, in accordance with Rule 28 (3) of the Supreme

Court, as follows:

Laura S. Martin
Assistant Attorney General
Attorney for the State of Texas
P.O. Box 12548
Austin, TX 78711

Billy E. Lee
Assistant County Attorney
Attorney for Jack Heard, C.R. Gaines
and Harris County
634 Harris County Administration Building
Houston, TX 77002

In addition, I served a copy of the Notice of Appeal on:

Clerk of the Supreme Court of Texas
Supreme Court Building
P.O. Box 12248
Austin, TX 78711

Patricia Small Burroughs

APPENDIX F

JACK HEARD, Sheriff

Houston, Texas 77002

Gus George
Chief Executive Assistant

March 6, 1981

Luke William Able

Attorney-at-Law

7303 Hillcroft

Suite 53

Houston, Texas 77081

Dear Mr. Able:

Reference is made to our conversation on February 12, 1981, in my office, reference to complaints received relative to you as an attorney advertising as a bail bondsman in violation of the Bail Bond Act. Your position was that you were in compliance with pertinent statutes. At that meeting you were informed that an opinion relative to this matter would be sought from the Harris County District Attorney's

Office.

The Office of District Attorney of Harris County advised in letter dated March 3, 1981 as follows:

> "....it is this office's opinion that inasmuch as an attorney can only execute a bail bond for his his own client, it is a criminal offense for an attorney to advertise 'as a bondsman' when he is not the holder of a bail bond license".

The letter from the District Attorney's Office further states, relative to the provisions of Section 4 of the Bail Bond Act as follows:

> "Based upon this provision, it is the opinion of this office that the Sheriff has the discretion to refuse to permit an attorney to execute bail bonds for his clients if the Sheriff is satisfied that the attorney is presently violating the Bail Bond Act by advertising as a bondsman."

In view of the opinion rendered by the Harris County District Attorney's Office you are hereby notified that under the

provisions of Section 3 (b) you no longer qualify under the attorney exception provided in this subsection and therefore may not execute any further bail bonds in Harris County. You may however, submit an application for a license to execute bail bonds as Bail Bondsman.

Yours truly,

s/
C.R. Gaines, Captain
Criminal Warrants Division

CRG/pr

Henry K.Oncken
First Assistant

District Attorney's Building
201 Fannin, Suite 200
Houston, Texas 77002

John B. Holmes, Jr.

District Attorney

Harris County, Texas

March 3, 1981

Captain C.R. Gaines

Bail Bond Section

Criminal Warrants Division

Harris County Sheriff's Office

301 San Jacinto

Houston, Texas 77002

Re: Opinion No. 81-3
Is it Lawful for An Attorney Who is Not Licensed Under the Bail Bond Act, Article 2372p-3, V.A.C.S., to Advertise the Fact That He Executes Bail Bonds?

Dear Captain Gaines:

You have requested an opinion from this office as to whether an attorney licensed to practice law by the State Bar of Texas, but not licensed to execute bail bonds

under the Bail Bond Act, Article 2372p-3, V.A.C.S., can lawfully advertise that he executes bail bonds for persons charged with criminal offenses.

Article 2372p-3, Sec. 3(b), V.A.C.S., permits an attorney who is a member of the State Bar of Texas to execute a bail bond or act as a surety for a person he actually represents in a criminal case without being licensed under the Bail Bond Act. However, this same subsection of the Act provides that if an attorney is found guilty of violating any term of the Act he may not thereafter execute a bail bond without a bail bond license. Further, Sec. 15(d) creates a misdemeanor offense punishable by a fine up to $500 for any person to "advertise as a bondsman who does not hold a valid license under this Act." (Emphasis supplied.) Construing

together these two provisions, Sec. 3(b) and Sec. 15(d), it is this office's opinion that inasmuch as an attorney can only execute a bail bond for his own client, it is a criminal offense for an attorney to advertise "as a bondsman" when he is not the holder of a bail bond license.

Section 4 of the Bail Bond Act permits the Sheriff to "refuse to accept [a] bond if, in the exercise of his discretion, he is satisfied that ... the provisions of this Act have been violated." Based upon this provision, it is the opinion of this office that the Sheriff has the discretion to refuse to permit an attorney to execute bail bonds for his clients if the Sheriff is satisfied that the attorney is presently violating the Bail Bond Act by advertising as a bondsman.

As to what constitutes advertising "as a

bondsman," it is the opinion of this office that an ad appearing in the "Bonds-Bail" subject heading of the yellow pages is such a form of advertising violative of the Bail Bond Act. In contrast, listing under one's name in the "Attorneys" subject heading of the yellow pages that one writes bail bonds as an attorney probably is not violative of the Bail Bond Act's prescription against advertising.

It is my pleasure to assist you. Please do not hesitate to contact me again if this office can provide any further assistance.

Sincerely

s/
JOHN B. HOLMES, JR.
District Attorney
Harris County, Texas

JBH,Jr.:gsb

cc: Henry Oncken and
Larry P. Urquhart, Opinion Committee
Gene Miles

APPENDIX G

NO. 81-15,461

IN THE DISTRICT COURT

OF HARRIS COUNTY, TEXAS

55TH JUDICIAL DISTRICT

LUKE WILLIAM ABLE, JR.

VS.

JACK HEARD, ET. AL.

PLAINTIFF'S REQUEST FOR ADDITIONAL OR AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff Luke William Able, Jr., requesting the Court to make additional or amended findings of fact and conclusions of law in addition to the findings and conclusions in the ORDER DENYING TEMPORARY INJUNCTION as follows:

I.

Section 15(d) of the Bail Bond Act, Article 2372p-3 of the Texas Civil Statutes in so far as it prohibits an

attorney from advertising his ability to execute bail bonds under section 3(b) of the said Bail Bond Act is violative of the First Amendment to the United States Constitution and Article I, Section 8 of the Texas Constitution.

. . . .

VIII.

The failure to accord plaintiff a hearing and the failure to give him notice denied him procedural due process in violation of the constitutions of Texas and the United States. Defendant's summary suspension of plaintiff's valuable privilege is unconstitutional.

. . . .

XI.

The chance given plaintiff to oppose the suspension of his privilege by defendants was constitutionally insufficient with regard to the following:

1. the private and PUBLIC interests involved;

2. the risk of an erroneous determination and the value of additional safeguards such as records of testimony, formal charges, the right to remain silent, the right to confront his accusers, disclosure of the identity of the complainant, the right to a jury trial, and other basic rights which every person accused of a crime has in this United States. (Plaintiff is accused of violating section 15(d) of said act which is a misdemeanor. The prohibited conduct is advertising without a bail bondsman's license which attorneys are not required to obtain before they may execute bail bonds.)

XII.

Imposition of punishment upon plaintiff for a crime without filing charges and convicting plaintiff violates each and

every provision of the Bill of Rights of the United States and Texas Constitutions which relates to the rights of any criminal defendant.

. . . .

XV.

There is a serious constitutional question about the validity of Section 15 (d) of the Bail Bond Act, Tex.Rev.Civ. Stats.Ann., applying to attorneys who are specially granted the privilege of executing bail bonds by section 3(b) of the same act.

The Court is of the opinion that the State of Texas has no valid governmental interest in allowing attorneys to execute bail bonds for their clients while suppressing all advertising of such privilege by such attorneys.

. . . .

WHEREFORE, PREMISES CONSIDERED, plaintiff prays that the Court make the foregoing additional or amended findings and conclusions in addition to the findings and conclusions listed in the ORDER DENYING TEMPORARY INJUNCTION signed on June 1, 1981.

Respectfully submitted,

/s/_____
Luke William Able, Jr.
Plaintiff-Pro Se
Bar No. 00811500
7303 Hillcroft, Suite 53
Houston, Texas 77081
777-0744

NOTICE OF SETTING

The foregoing motion is set for a hearing on the ___day of _____, 1981, at ____o'clock _.M.

SIGNED AND ENTERED this _____ day of _____, 1981.

_____
Reagan Cartwright, Judge

CERTIFICATE OF SERVICE

This June ___, 1981, I mailed a true copy hereof as shown below:

Billy E. Lee
Asst. County Attorney
634 Harris County Administration Building
Houston, Texas 77002
221-5101
CERT. MAIL # 107100

Laura S. Martin
Asst. Attorney General
P.O.Box 12548
Austin, Texas 78711
512-475-3131
Cert. Mail # 107916

/s/
Luke W. Able, Jr.

ORDER

The foregoing motion is ~~granted~~/denied.

SIGNED this 9 day of June, 1981.

/s/
Reagan Cartwright, Judge